

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: July 13, 1993
CASE NO. 84-CTA-131

IN THE MATTER OF

U. S. DEPARTMENT OF LABOR,
COMPLAINANT,

v.

KENTUCKY CABINET FOR HUMAN RESOURCES,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981). ^{1/} At issue is the application of the exclusion clause of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 11, 96 Stat. 1749, 1756 (1982), codified at 31 U.S.C. §§ 3701, 3717 (1988), which addresses whether debts owed by the states to the Federal Government may be exempt from interest assessments.

BACKGROUND

The presiding ALJ issued a decision on February 20, 1987, affirming the Grant Officer's disallowance of \$196,673 of CETA

^{1/} CETA was replaced by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (1988). However, CETA continues to govern administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984. 29 U.S.C. § 1591(e).

costs claimed by Kentucky Cabinet. The ALJ found that the record did not sustain Kentucky Cabinet's contention that any of the disallowed funds had been repaid to the Department of Labor (DOL) or there had been a subsequent adjustment of the succeeding year budget satisfying the debt. The ALJ then concluded that the exclusion provision of the DCA, at §§ 3701(c), 3717, specifically excluded debts owed by the states from any interest levies by the Federal Government, and determined that DOL was "not empowered to charge interest on the disallowed costs." In the Matter of U.S. Dep't of Labor v. Kentucky Cabinet for Human Resources, Case No. 84-CTA-131, ALJ Dec., slip op. at 17.

The Grant Officer excepted to the ALJ's decision solely on the issue of the Department's authority to charge interest on a debt owed to it. Kentucky Cabinet excepted to the ALJ's decision that it was strictly liable for the questioned costs of its subgrantees barring any findings of fraud, and to the ALJ's findings of fact with regard to certain alleged repayments. It requested the Secretary to waive recoupment of the disallowed costs absent any finding of fraud.

DISCUSSION

The DCA requires the head of a government agency to charge a debtor of the United States an annual rate of interest on its outstanding debt,^{2/} but also provides at 31 U.S.C. § 3717(g)

^{2/} 31 U.S.C. § 3717 entitled Interest and penalty on claims provides:

(a)(1) The head of an executive or legislative agency
(continued...)

that "[t]his section does not apply ... (2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." The grants in this case were executed before October 25, 1982, and their operational phases were completed prior to that date, although the audit was not completed until after that date and the Grant Officer's Final Determination was not issued until May 3, 1984.

In Florida Dep't of Labor and Employment Security v. U.S. Dep't of Labor, 893 F.2d 1319 (11th Cir. 1990), the court was confronted with a chronological situation similar to this case, and determined that on-going administrative activities kept the grants "in effect" through the specified date. 893 F.2d at 1323-24. (CETA grant operations which concluded prior to October 25, 1982, but CETA prime sponsor's responsibilities continued beyond grant termination date kept the grants "in effect"). See also West Virginia v. United States, 479 U.S. 305, 312 n.6 (1987) (DCA not applicable to claims arising under contracts entered into before October 25, 1982). The courts in each case determined that the provisions of the DCA were inapplicable, as I do in the present case.

With regard to the Department's authority to assess interest on debts owed to it, I am guided by the Supreme Court's

²(. ..continued)

shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12 month period ending on September 30 of each year, rounded to the nearest whole percentage point.

affirmation of the Federal Government's common law right to assess interest on its debts for more than a century.^{3/} Further, the language of the 1978 CETA Amendments provided the Secretary with the authority "to order such sanctions or corrective actions as are appropriate." 29 U.S.C. § 816(d)(1). See also, 29 U.S.C. § 816(d)(2). Such authority has been broadly construed by the courts. City of Oakland v. Donovan 703 F.2d 1104, 1107 (9th Cir. 1983). See also City of St. Louis v. U.S. Dep't of Labor, 787 F.2d 342, 349 (8th Cir. 1986); Illinois Miarant Council v. U.S. Dep't of Labor, 773 F.2d 180, 183 (7th Cir. 1985). I find that the power to assess interest on debts owed to the Department is appropriate under that authority.

My review of the record is in agreement with the ALJ's determination, and I find that the record does not substantiate Kentucky Cabinet's allegation that the disallowed funds pertaining to the Grant Officer's Final Determination's Finding 4 had been recouped through a following year allocation adjustment; nor is there support that the funds disallowed in Finding 11 m had been previously recouped by the Department of Labor.

I also deny Kentucky Cabinet's request to waive repayment of the disallowed costs due to the absence of substantiating records absent a finding of fraud. The only way that the Department of Labor can verify that appropriated funds were spent for the

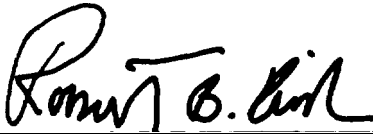
^{3/} West Virginia v. United States, 479 U.S. 305 (1987); Rodaers v. United States, 332 U.S. 371 (1947); Board of Commissioners of the County of Jackson, Kansas v. United States, 308 U.S. 343 (1939); Billings v. United States, 232 U.S. 261 (1914); Young v. Godbe, 82 U.S.(Wall) 562 (1872).

purposes intended by Congress is by requiring documentation to support expenditures. Montgomery County Maryland vs. Department of Labor, 757 F.2d 1510, 1513 (4th Cir. 1985).

ORDER

The ALJ's finding that the Grant Officer's disallowance of \$196,673 was appropriate IS AFFIRMED. The ALJ's determination that the Department of Labor is not entitled to charge interest on disallowed costs IS REVERSED. The Kentucky Cabinet for Human Resources is directed to repay to the U.S. Department of Labor the sum of \$196,673 with interest in accordance with Employment and Training Order No. 2-86, issued June 5, 1986.

SO ORDERED.



Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: U.S. Department of Labor v. Kentucky Cabinet for
Human Resources

Case No. : 84-CTA-131

Document : Secretary's Final Decision and order

A copy of the above-referenced document was sent to the following
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